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NTSB Order No. EA-3971

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 19th day of August, 1993

DAVID R. HINSON, Administrator, Federal Aviation Administration, Complainant, v. RICHARD LYLE HASLEY, Respondent.	Docket SE-11448

OPINION AND ORDER

Respondent has appealed from the oral initial decision of Administrative Law Judge Jimmy N. Coffman, issued on November 6, 1991, following a 2-day evidentiary hearing.[1] The law judge affirmed an order of the Administrator revoking respondent's airline transport pilot (ATP) and first class medical

[1]The initial decision, an excerpt from the hearing transcript, is attached. Page references to the transcript indicate Volume I or Volume II.

certificates for violations of 14 C.F.R. 61.3(c), 67.20(a)(4), and 121.383(a).[2] We deny the appeal.

The Administrator charged that respondent had altered his medical certificate to disguise the fact that he had not had the 6-month physical necessary for him to continue as a pilot in command for Orion Air, his Part 121 employer. Respondent admitted that he had been issued a medical certificate on January 30, 1989. To remain current, he needed to undergo a new physical and receive a new medical certificate by July 31, 1989.

There is considerable dispute in the record concerning whether Orion Air memos to respondent concerning this matter were received by him. Regardless, respondent admitted that, on or about August 2, 1989, he submitted a copy of his medical

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[2] § 61.3(c) read:

(c) Medical certificate. Except for free balloon pilots piloting balloons and glider pilots piloting gliders, no person may act as pilot in command or in any other capacity as a required pilot flight crewmember of an aircraft under a certificate issued to him under this part, unless he has in his personal possession an appropriate current medical certificate issued under part 67 of this chapter. . . .

§ 67.20(a)(4) provided:

(a) No person may make or cause to be made--

(4) Any alteration of any medical certificate under this part.

§ 121.383(a) read, as pertinent:

(a) No certificate holder may use any person as an airman nor may any person serve as an airman unless that person -

(2) Has any required appropriate current airman and medical certificates in his possession while engaged in operations under this part. . . .

certificate to Orion Air.[3]

At the hearing, Orion Air witnesses testified that, when they first reviewed the document on August 9, they were alerted to its possible alteration by the fact that the copy indicated that a physical had been performed on April 30, 1989, only 3 months after the last one and 3 months before the next physical was due. Tr. Vol. I at 31 and 79. On further study, they testified, it appeared that, in the space marked "Date of Examination," "1-30-89" had been changed to "4-30-89" by, in handwriting, changing the typewritten "1" to a "4." One of the two documents was made into a transparency and set on top of the other. The documents, including the signatures, were identical with the exception of the 1 and the 4. Tr. Vol. I at 108. The FAA records center, when queried, had no record of a 4-30-89 physical for respondent. Id. at 80.

Orion's Senior Director of Flight Operations, after being told of and reviewing the matter, testified that, when he asked respondent about it, respondent presented a mutilated medical certificate with numerous erasures, and with the 4 not in handwriting, but in typewriting not level with the line of characters. He believed this to be a further alteration. Id. at

[3]According to the unrebutted testimony, Orion required that a copy of the new certificate be provided before the old one expired. This testimony also indicated that, in the normal course of business, respondent would have tendered a new, current certificate to the scheduler on duty at the time his old certificate expired, as it was the on-duty scheduler's responsibility to ensure that respondent was current, and the certificate would then have been transmitted to other office staff for recording and filing.

106. Respondent admitted to him and to the Director of Flight Operations that he had altered the form. Id. at 116, 136-137, and Exhibit A-9. Between August 1 and August 9, respondent flew 23 flights as pilot in command. Id. at 162. Respondent obtained a first class medical certificate on August 11, 1989. Exhibit A-6.

In his appeal, respondent generally argues that the Administrator failed in his burden of proof and that revocation is not warranted. Respondent first argues that the Administrator must prove fraudulent alteration or intentional falsification and that he failed to do so. The Administrator responds that he need prove neither; he need only prove, consistent with the words of the rule, that respondent altered the certificate. We agree. Respondent's argument has no basis in the rule. Moreover, alteration of an official document such as a medical certificate, regardless of the purpose, can legitimately constitute a proscribed activity. Thus, respondent's argument that the Administrator did not prove fraud or intentional falsification is not grounds for reversal.[4]

Respondent further argues that the Administrator failed to prove it was respondent who altered the certificate. On the

[4]In the context of this claimed error, respondent argues that he should have been permitted to amend his answer to a denial of paragraph 6 of the revocation order. However, we can find no request to amend respondent's answer to paragraph 6. At the hearing, he asked to change his answer to paragraph 5 from an admission to a denial, and it was not error for the law judge to deny such a late request. (Respondent had already amended his answer to paragraph 3 from an admission to a denial.)

record before us, where there is absolutely no basis in the evidence to suggest that someone else altered the certificate, this argument borders on the frivolous. The law judge made a credibility determination that there is no basis to overturn, and respondent has failed to suggest any person other than himself who would have reason to alter the certificate.[5]

In affirming the order of revocation, the law judge rejected argument by respondent that, because copies of the certificate, rather than the original, had been offered in evidence, the § 67.20 charge of alteration could not stand. Respondent challenges that finding, yet he offers nothing to suggest that the copies of the various documents are unreliable, and the testimony on the record is to the contrary. See, e.g., id., at 152 and Vol. II at 28. Thus, and in the face of extended, unrebutted testimony, respondent was not denied due process by the Administrator's failure to produce the original certificate. (Respondent ignores that he could have attempted to locate it as well.)[6]

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[5]The Administrator also points out that, if respondent did not alter the certificate before giving it to the dispatcher, then he turned in an expired one -- something he was unlikely to have done as the testimony shows it would be immediately recognized as such.

[6]We also reject respondent's claim that the Administrator failed to prove the allegation in the complaint that a typewritten 4 replaced the typewritten 1 (see discussion at page 3, supra). Although Exhibit A-8 may not demonstrate this charge as well as it might, the testimony is clear and unequivocal. The unrebutted evidence supports a finding that two alterations were made -- a handwritten 4 and then a typewritten 4.

The law judge also rejected the argument that, because the carrier and other Orion employees were not prosecuted for related violations, respondent was denied fair treatment. Respondent suggests that this failure to prosecute others somehow compromises the reliability of the testimony of the Orion employees. We cannot agree, especially when two of the three Orion witnesses (all of whose testimony agreed on the key points) were no longer with Orion, or with any air carrier, and would, therefore, have little or no reason to perjure themselves.[7] Again, this was a credibility determination made by the law judge for which no good reason to reverse has been offered.

Moreover, we do not second-guess the Administrator's prosecution choices. Our role is to "review the evidence in a particular case to determine if it supports the allegations against the particular respondent." Administrator v. Kaolian, 5 NTSB 2193, 2194 (1987).

Overall, we affirm the law judge's finding that the Administrator proved his case by a preponderance of the reliable, probative, and substantial evidence. Respondent's alteration of an official document, and lack of any explanatory or mitigating evidence, demonstrate that he lacks the care, judgment, and responsibility demanded of an airline transport pilot. See Twomey v. National Transp. Safety Bd., 821 F.2d 63, 68 (1st Cir.

[7]Also, respondent is mistaken in stating (Appeal at 15) that "[t]he persons who specifically had responsibilities for downgrading Mr. Hasley and inspecting any certificate presented are the sole witnesses for the Administrator." Neither Ms. Stahmer nor Ms. Clark had either responsibility.

1987) ("In arguing that the result here goes more to the morality of the pilot than to his danger to public safety, Twomey fails to recognize that the administrator could have found an important connection between the two."). No notification failure or reminder lapse on the part of the carrier (i.e., respondent seems to suggest that he was not aware that his medical had expired and he did not get materials the carrier allegedly sent him to this effect) would make respondent any less responsible either for ensuring that his medical is current or for operating an aircraft when it was not.[8] And, we are unwilling, especially in the absence of direct testimony by respondent, to see any mitigation in the view suggested by respondent that the carrier's change in timing of its pilot route bidding practices reasonably caused him to forget that his medical certificate had expired.

Finally, respondent appeals the law judge's refusal to grant the continuance sought at the hearing. We cannot find that the law judge abused his discretion. Respondent was notified of the proposed action in 1989 and an advance notice of the November hearing was issued in August. Although counsel at the hearing had been engaged only days before (prior counsel had, however,

[8]Respondent also claims that revocation is inconsistent with FAA Enforcement Policy Order 1000.9D. As respondent suggests, we would review the Administrator's policy to the extent of determining if it were being uniformly applied. Here, however, this issue was not raised before the law judge, nor is the order even in evidence for us to review. In any case, "uniform treatment" presumably means uniformity as among similarly situated respondents. Respondent here has not shown that the Administrator discriminated between similarly situated respondents.

been from the same firm), the issues were not difficult. Indeed, at the hearing respondent's counsel did not argue that he had inadequate time for preparation. Moreover, respondent failed to indicate what he would have done differently had a continuance been granted. While he initially indicated that four witnesses for respondent had not been able to attend the hearing, he did not explain why, despite the extensive notice, they could not appear, nor did he identify them or make any offer of proof. Compare Administrator v. Teague, NTSB Order EA-3527 (1992).

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;

2. The revocation of respondent's airline transport pilot and medical certificates shall begin 30 days from the date of service of this order.[9]

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.

[9]For the purposes of this order, respondent must physically surrender his certificates to an appropriate representative of the FAA pursuant to FAR § 61.19(f).